

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UMPC AND ITS SUBSIDIARIES  
UPMC PRESBYTERIAN  
SHADYSIDE AND MAGEE-  
WOMENS HOSPITAL OF UPMC,

Petitioners,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

and

SEIU HEALTHCARE  
PENNSYLVANIA, CTW, CLC,

Intervenor.

NO. 16-1422, 17-1007

**INTERVENOR’S MOTION TO RECONSIDER ORDER GRANTING  
PETITIONERS’ MOTION FOR ADDITIONAL EXTENSION OF TIME**

On May 26, 2017, Petitioners UPMC and subsidiaries (“Petitioners” or “UPMC”) filed a Motion for Additional Extension of Time that is described as “unopposed” and in which Petitioners represent that they “conferred with opposing counsel who have stated . . . they do not oppose this motion.” Contrary to that representation, Petitioners did not in fact confer with counsel for Intervenor SEIU Healthcare Pennsylvania, CTW, CLC (“Intervenor” or “SEIU Healthcare

Pennsylvania”), and Intervenor opposed the motion. Intervenor filed an opposition on the next business day, but the Court Clerk had granted the motion a few minutes before Intervenor’s opposition filing on the basis of the representation that the motion was unopposed.

Intervenor now asks that the Court reconsider and vacate its Order granting Petitioners’ Motion for Additional Extension of Time and to deny the motion for the reasons give below.

### **BACKGROUND**

This case began five years ago in May 2012 when SEIU Healthcare Pennsylvania first filed a charge with the National Labor Relations Board (“Board”) alleging that UPMC was engaged in unlawful conduct. Since then, an Administrative Law Judge and the Board have both determined—in 2013 and 2015, respectively—that various UPMC policies violate employees’ rights under the National Labor Relations Act by preventing employees from communicating with co-workers about unionization and the terms and conditions of their employment. *See, e.g.*, 362 NLRB No. 191 (2015); *see also* 29 U.S.C. §157.

UPMC petitioned for review in this Court, and its brief was originally due on March 27, 2017. At some point UPMC and the Board entered into settlement negotiations. Although SEIU Healthcare Pennsylvania has not been included in those discussions, Intervenor consented to UPMC’s two previous extension

requests, for a total of 60 additional days, while Petitioners and the Board negotiated. In April Petitioners' counsel said that the second extension was needed "to complete the settlement[.]"

On May 26, Petitioners filed a third extension request that it described as "unopposed" and in which Petitioners claimed to have conferred with opposing counsel when, in fact, Petitioners had not contacted counsel for SEIU Healthcare Pennsylvania. The motion was filed in the early afternoon well before ordinary close of business, but in response to an email from Intervenor's counsel, counsel for Petitioners described the mis-statements as due to the "last minute" filing.

### **ARGUMENT**

Intervenor has no interest in preventing a just settlement in this case that will protect employee rights, but this matter has been delayed long enough. As of this month, the employees whose core NLRA rights are at stake have been waiting five years for final resolution. A settlement could have been negotiated at any time during those five years and certainly after the Board's decision in 2015 and denial of reconsideration nearly six months ago. Intervenor does not know the cause of the delay, having not been included in settlement negotiations, but there must be some reasonable end point to this process so that UPMC's affected employees—who have prevailed at every step of these proceedings—can have the protection that either settlement or enforcement will provide.

Furthermore, while Intervenor has relied on the representations of Petitioners' counsel in agreeing to Petitioners' two previous extension requests (including counsel's implication in April that a settlement would soon be complete), the union is no longer comfortable relying on counsel's representation that settlement is near given the mis-statements in Petitioners' most recent filing.

### CONCLUSION

For both these reasons, Intervenor asks that the Court reconsider and vacate its order granting Petitioners' third extension request and that the request be denied and Petitioners directed to file their brief within two business days of the Court's order. If the Court is inclined to grant Petitioners any more time to file their brief, Intervenor asks that the extension be for a period shorter than fourteen days and that the Court's order provide that no further extensions will be granted.

Respectfully submitted,

/s/ Nicole G. Berner

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**CERTIFICATE OF COMPLIANCE (RULE 32(g))**

I hereby certify that the foregoing Motion was submitted in Times New Roman 14-point font with a word count of 656 words, in compliance with FRAP 27(d) and 32(a)(5).

/s/ Nicole G. Berner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of May, 2017, I electronically filed a true and correct copy of the foregoing document using the CM/ECF system, thereby sending notification of such filing to all counsel of record.

/s/ Nicole G. Berner